

FILED  
MISSOULA, MT

2007 JUL 11 PM 5 09

PATRICK E. DUFFY

BY \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

JACK J. JENKINS,	)	CV 06-110-M-DWM-JCL
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
JAMES MACDONALD, ATTORNEY GENERAL	)	
OF THE STATE OF MONTANA,	)	
	)	
Defendants.	)	
_____	)	

Petitioner Jenkins is a state prisoner proceeding pro se. Jenkins has been denied placement at a pre-release facility because of an outstanding warrant issued by Darby City Court. He has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 in which he asks the Court to intervene and order the Darby City Court to dismiss the pending warrant or to execute the warrant promptly.

United States Magistrate Judge Jeremiah C. Lynch conducted

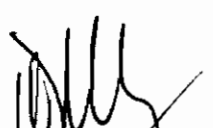
preliminary screening of the Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases and determined that the Court lacks subject matter jurisdiction because the warrant that Petitioner challenges is not the legal basis for his incarceration. On that basis Judge Lynch recommends dismissal of the Petition and denial of a certificate of appealability.

Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Lynch's recommendation and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DISMISSED for lack of subject matter jurisdiction and a certificate of appealability is DENIED.

DATED this 11 day of July, 2007.

  
\_\_\_\_\_  
Donald W. Molloy, Chief Judge  
United States District Court